

**CALIFORNIA INDUSTRIAL DEVELOPMENT FINANCING ADVISORY COMMISSION  
INDUSTRIAL DEVELOPMENT BONDS**

**Meeting Date: May 22, 2007**

***Request for Initial and Final Resolution for Tax-Exempt Bond Approval***

Prepared by: *Deanna Hamelin*

<b>Issuer:</b> California Municipal Finance Authority (CMFA)	<b>Amount Requested:</b> \$8,285,375 (TE)
<b>Borrower:</b> Prima Noce Packing, Inc. and/or Walnut Venture Enterprises, LLC or an affiliate thereof	<b>Application No.:</b> 07-0006
<b>User:</b> Prima Noce Packing, Inc. and Walnut Venture Enterprises, LLC and their affiliates	<b>IR &amp; FR No.:</b> 07-0006
<b>Location:</b> San Joaquin County near the City of Linden	

**Borrower/User/Background:** Prima Noce Packing, Inc. and Walnut Venture Enterprises, LLC (together the “Company”) were incorporated in California in 2006 and 2007, respectively. The Company is located in unincorporated San Joaquin County, near the City of Linden. The Company is in the business of processing, shelling, sorting, and packing walnuts for distribution to domestic and international customers.

For the proposed Project, Prima Noce Packing, Inc. and Walnut Venture Enterprises, LLC, and their affiliates will be the Borrowers of the bond funds and the Users of the Project.

**Project Information:** Bond proceeds will be used to finance the construction and equipping of a walnut processing and packing facility. Prima Noce Packing will be the operator of the facility and will own the equipment that is to be acquired. Walnut Ventures Enterprises, LLC is the owner of the two new buildings that will house the facilities that are currently under construction. The first building is a 43,500 square foot walnut shelling building for the storage, shelling, sorting, and packaging of processed walnuts. The second building is a 3,500 square foot fumigation facility. Both buildings are located on land that is owned by Lawrence and Beverly Sambado, who are shareholders of both Prima Noce Packing, Inc. and Walnut Ventures Enterprises, LLC. The new facility will have the ability to shell 12,000 lbs. of walnuts per hour and process 15,000 lbs. of in-shell walnuts per hour. In addition, bond proceeds will be used for site improvements, including asphalt and concrete paving.

**Anticipated Timeline:** The walnut shelling facility is anticipated to be completed in July 2007. The anticipated completion date of the fumigation facility is August 2007. Equipment installation is scheduled to be completed by September 2007.

**Prior Actions/Financing:** The Company has no outstanding tax-exempt financings.

**Local Government Support:** Ken Vogel, Supervisor District Four, submitted a letter supporting the Prima Noce and Walnut Ventures Enterprises Project (Attachment A).

**Statutory Criteria:** The points noted below have been awarded based on evaluation consistent with CDLAC guidelines; however, CDLAC does not require the evaluation of points for all statutory criteria.

- 1) **PUBLIC BENEFITS:** Staff assigned a total of 28 verifiable points to the Project, which are detailed below.

**Unemployment Rate of Project Area (10 points):** The unemployment rate for the Project area is 9.1%, while the statewide average unemployment rate in California is 4.9%. Therefore, the unemployment rate for the Project area is 186% of the statewide rate.

Although the Company did not meet the minimum point threshold for job creation/retention, the Company represents that it plans to hire 31 new part-time employees for the walnut packing facility. Eventually the Company hopes to employ the seasonal, part-time employees as full-time workers who will work year-round through the cherry, apple, and walnut seasons. Typically, cherry season runs late-April through mid-June, apple season runs mid-August through mid-January, and walnut season runs late-October through late-March. The Company also plans to fill two full-time management positions at the walnut packing facility.

**Welfare-to-Work Plan (5 points):** The Company provided a letter from the San Joaquin County's Human Services Agency that verifies Prima Noce Packing, Inc., and its affiliate Prima Frutta Packing, Inc., will participate in CalWORKs employment services (Attachment B).

**Average Hourly Wage (5 points):** The Company's average hourly wage is \$13.24, while the Metropolitan Statistical Average (MSA) for the City of Stockton has an average manufacturing hourly wage of \$7.94. Therefore, the Company's average hourly wage is 167% of the MSA wage for Stockton.

**Energy Efficiency (5 points):** The Company provided a letter from Pacific Gas and Electric (PG&E) and LMC West, an equipment manufacturer, that verifies the installation of energy saving devices such as premium efficiency motors for large horsepower applications, skylights to introduce natural day lighting, and transparent side wall panels to reduce the need for traditional lighting fixtures. Energy efficient designs and control of blowers and fans used for aspiration of foreign particles, along with the fully insulated building, will provide additional energy savings for the Company. The new energy saving features will result in an energy savings of at least 15% when compared to the California Energy Commission's 2005 Building Energy Efficiency Standards Nonresidential Compliance Standards (Attachment C).

**Leveraging (3 points):** The total cost for this project is \$9,451,272. In addition to the \$8,285,375 in tax-exempt IDB bonds, the Company will borrow \$1,165,897 or 12% of the cost through a conventional loan.

- 2) **RELOCATION OF COMPANY OPERATIONS (No point evaluation required):** The Company will remain at its current location.
- 3) **QUALIFICATION OF BOND ISSUANCE (No point evaluation required):** Based upon the proposed financial structure, and based upon the application and other materials submitted to CIDFAC for the proposed Project, staff believes the bonds that will be issued in connection with the Project: (a) will be adequately secured; (b) will be fair, just, and equitable to a purchaser of the bonds; and (c) will not work a fraud upon the bond purchaser. Final determination of qualification of the bonds will be subject to review of final bond documents prior to the issuance of bonds.

**Status of Permit/Other Required Approvals:**

1. The California Municipal Finance Authority (CMFA) approved the inducement Resolution in an aggregate amount not to exceed \$10,000,000 for the Project on February 16, 2007.
2. A TEFRA hearing was held by the County of San Joaquin on April 17, 2007, and no comments in support of or opposition to the Project were received.
3. The Company provided verification from the San Joaquin County Community Development Department that the project meets local land use and zoning requirements and that all construction permits are in place.

**Financing Details:** The CMFA will issue the tax-exempt bonds on a private placement basis. Banc of America Public Capital Corp., which is a Qualified Institutional Buyer (QIB) as defined by the Securities and Exchange Commission's (SEC) Rule 144A, will purchase the bonds. The bonds will:

- Be guaranteed by Prima Frutta Packing Company, Tim Sambado, Lawrence & Beverly Sambado, Richard Sambado, A. Sambado & Son, and Walnut Venture Enterprises, LLC.
- Be secured by a first priority lien on the machinery and equipment purchased by the bond proceeds.
- Be further secured by a deed of trust on the real and leasehold assets housing the businesses of Prima Frutta and Prima Noce, and by a first lien on unencumbered machinery and equipment currently owned by Prima Frutta.
- Have floating rate initially set at 5.0757%, repayable over an 88-month period and amortized over a 10-year period. At the end of the 88-month period, the bonds will be paid and the Borrowers will be obligated to repay the remaining 27% balance of the loan through either a balloon payment or securing another form of financing for the remaining balance.

The bonds will be issued in accordance with CIDFAC's private placement policy, which has the following requirements:

- The bond purchaser must be a Sophisticated Investor as defined under SEC Rule 144A.
- The Sophisticated Investor must sign a "traveling" sophisticated investor letter outlining the requirement and restrictions, which will follow the deal in the event the bonds are sold or traded at a later date.
- The security of the private placement debt must be collateral provided by the Borrower.
- The bonds will be issued in minimum denominations of \$250,000.

**Financing team:**

**Issuer:** California Municipal Finance Authority

**Bond Counsel:** Ronald E. Lee, Attorney at Law

**Private Placement Purchaser:** Banc of America Public Capital Corp.

**Legal Questionnaire:** Staff has reviewed the Company's responses to the questions contained in the Legal Status portion of the Application (see Attachment D). Staff recommends approval of the request for tax-exempt IDB financing for the Prima Noce/Walnut Venture walnut packing facility. Based upon the representations concerning the disclosed legal matters by the Company, and given the fact that financing is a private placement with Banc of America Public Capital Corp., a Qualified Institutional Buyer (QIB) under federal securities laws, staff believes that the proposed financing will be fair, just, and equitable to a purchaser of the bonds and will not work a fraud upon the bond purchaser.

**Recommendation:** Staff recommends approval of Initial and Final Resolution No. 07-0006 in an amount not to exceed \$8,285,375 of tax-exempt bonds for Prima Noce Packing, Inc. and Walnut Venture Enterprises, LLC, subject to staff analysis and approval of final bond documents, including receipt of bond counsel opinion and CDLAC allocation approval as set forth in the Initial and Final Resolution.

**PRIMA NOCE PACKING,  
INCORPORATED AND WALNUT  
VENTURE ENTERPRISES, LLC  
AND THEIR AFFILIATES**

**Bond Amount: \$8,285,375 (TE)**

Unincorporated San Joaquin County near  
the City of Linden

Application No. 07-0006

May 22, 2007

**STAFF SUMMARY – CIDFAC**

**Prepared by:** *Deanna Hamelin*

**ISSUE:**

On behalf of Prima Noce Packing Incorporated and/or Walnut Venture Enterprises, LLC, or an affiliate thereof (the “Company”), the California Municipal Finance Authority (“CMFA” or the “Issuer”) requests approval of the Initial and Final Resolution No. 07-0006 for an amount up to \$8,285,375. Bond proceeds will be used for the construction of a walnut shelling facility, fumigation facility, and for the acquisition and installation of new equipment including walnut shelling equipment, electronic sorting, sorting and packing, and storage equipment.

**CDLAC.** The Company anticipates applying for CDLAC allocation at the May 23, 2007 meeting.

**BORROWER/USER:**

Prima Noce Packing, Incorporated and Walnut Venture Enterprises, LLC (together “the Company”) were incorporated in California in 2006 and 2007, respectively. The Company and its affiliates have been active in the walnut industry for 20 years, and have had great success with sales of both shelled and in-shell walnuts to both foreign and domestic customers such as Satoh in Japan, Ecofut LTDA in Chile, Produce Junction, and Star Snacks in the United States. For the proposed Project, Prima Noce Packing, Incorporated and Walnut Venture Enterprises, LLC and their affiliates will be the Borrowers of the bond funds and the Users of the Project.

**The owners of Prima Noce Packing, Inc.  
are:**

Tim Sambado	28%
Lawrence & Beverly Sambado	20%
Mike Garliepp	7%
Dave Wyman	5%
Robert Lagorio	10%
Richard Lagorio	10%
John Dondero	10%
Balance shared by three shareholders	10%
<b>Total:</b>	<b><u>100%</u></b>

**The owners of Walnut Venture  
Enterprises, LLC are:**

Tim Sambado	67%
Lawrence & Beverly Sambado	33%
<b>Total:</b>	<b><u>100%</u></b>

The Borrowers are affiliated with the following entities through some common ownership: Prima Frutta Packing, Inc., A. Sambado and Son, and Primavera Marketing, Inc.

**Legal Questionnaire** Staff has reviewed the Company's responses to the questions contained in the Legal Status portion of the Application (see Attachment D). Staff recommends approval of the request for tax-exempt IDB financing for the Prima Noce/Walnut Venture walnut packing facility. Based upon the representations concerning the disclosed legal matters by the Company, and given the fact that financing is a private placement with Banc of America Public Capital Corp., a Qualified Institutional Buyer (QIB) under federal securities laws, staff believes that the proposed financing will be fair, just, and equitable to a purchaser of the bonds and will not work a fraud upon the bond purchaser.

**Prior Actions and Financings.** The Company has no outstanding tax-exempt financings.

**Local Government Support:** Ken Vogel, Supervisor District Four, submitted a letter supporting the Prima Noce and Walnut Ventures Enterprises Project (Attachment A).

**PROJECT INFORMATION:**

Bond proceeds will be used to finance the construction and equipping of a walnut processing and packing facility. Prima Noce Packing will be the operator of the facility and will own the equipment that is to be acquired. Walnut Ventures Enterprises, LLC is the owner of the two new buildings that will house the facilities that are currently under construction. The first building is a 43,500 square foot walnut shelling building for the storage, shelling, sorting, and packaging of processed walnuts. The second building is a 3,500 square foot fumigation facility. Both buildings are located on land that is owned by Lawrence and Beverly Sambado, who are shareholders of both Prima Noce Packing, Inc. and Walnut Ventures Enterprises, LLC. The new facility will have the ability to shell 12,000 lbs. of walnuts per hour and process 15,000 lbs. of in-shell walnuts per hour. In addition, bond proceeds will be used for site improvements, including asphalt and concrete paving.

**Anticipated Timeline.** The walnut shelling facility is anticipated to be completed in July 2007. The anticipated completion date of the fumigation facility is August 2007. Equipment installation is scheduled to be completed by September 2007.

**Status of Permit/Other Required Approvals:**

1. The California Municipal Finance Authority approved the inducement Resolution in an aggregate amount not to exceed \$10,000,000 for the Project on February 16, 2007.
2. A TEFRA hearing was held by the County of San Joaquin on April 17, 2007, and no comments in support of or opposition to the Project were received.
3. The Company provided verification from the San Joaquin County Community Development Department that the project meets local land use and zoning requirements and that all construction permits are in place.

**STATUTORY CRITERIA:** The points noted below have been awarded based on evaluation consistent with CDLAC guidelines; however, CDLAC does not require the evaluation of points for all statutory criteria.

- 1) **PUBLIC BENEFITS:** Staff assigned a total of 28 verifiable points to the Project, which are detailed below.

**Unemployment Rate of Project Area (10 points):** The unemployment rate for the Project area is 9.1%, while the statewide average unemployment rate in California is 4.9%. Therefore, the unemployment rate for the Project area is 186% of the statewide rate.

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**Average Hourly Wage (5 points):** The Company's average hourly wage is \$13.24, while the Metropolitan Statistical Average (MSA) for the City of Stockton has an average manufacturing hourly wage of \$7.94. Therefore, the Company's average hourly wage is 167% of the MSA wage for Stockton.

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- 2) **RELOCATION OF COMPANY OPERATIONS (No point evaluation required):** The Company will remain at its current location.

- 3) **QUALIFICATION OF BOND ISSUANCE (No point evaluation required):** Based upon the proposed financial structure, and based upon the application and other materials submitted to CIDFAC for the proposed Project, staff believes the bonds that will be issued in connection with the Project: (a) will be adequately secured; (b) will be fair, just, and equitable to a purchaser of the bonds; and (c) will not work a fraud upon the bond purchaser. Final determination of qualification of the bonds will be subject to review of final bond documents prior to the issuance of bonds.

**FINANCING DETAILS:**

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- Be secured by a first priority lien on the machinery and equipment purchased by the bond proceeds.
- Be further secured by a deed of trust on the real and leasehold assets housing the businesses of Prima Frutta and Prima Noce, and by a first lien on unencumbered machinery and equipment currently owned by Prima Frutta.
- Have floating rate initially set at 5.0757%, repayable over an 88-month period and amortized over a 10-year period. At the end of the 88-month period, the bonds will be paid and the Borrowers will be obligated to repay the remaining 27% balance of the loan through either a balloon payment or securing another form of financing for the remaining balance.

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- The security of the private placement debt must be collateral provided by the Borrower.
- The bonds will be issued in minimum denominations of \$250,000.

**FINANCING TEAM:**

**Issuer:** California Municipal Finance Authority  
**Bond Counsel:** Ronald E. Lee, Attorney at Law  
**Private Placement Purchaser:** Banc of America Public Capital Corp.

**RECOMMENDATION:**

Staff recommends approval of Initial and Final Resolution No. 07-0006 in an amount not to exceed \$8,285,375 of tax-exempt bonds for Prima Noce Packing, Inc. and Walnut Venture Enterprises, LLC, subject to staff analysis and approval of final bond documents, including receipt of bond counsel opinion and CDLAC allocation approval as set forth in the Initial and Final Resolution.



INITIAL AND FINAL RESOLUTION  
OF THE  
CALIFORNIA INDUSTRIAL DEVELOPMENT FINANCING  
ADVISORY COMMISSION (CIDFAC)  
INDUSTRIAL DEVELOPMENT BONDS  
IR/FR #: 07-0006

WHEREAS, California Municipal Finance Authority (CMFA) (Authority) has transmitted the application of Prima Noce Packing, Incorporated and Walnut Venture Enterprises, LLC and their affiliates (Applicant), for the issuance of \$8,285,375 of tax exempt bonds under the provisions of the California Industrial Development Financing Act, and has informed the California Industrial Development Financing Advisory Commission (the Commission) that it has adopted a resolution declaring its intention to issue such bonds and that the County of San Joaquin has held a public hearing regarding the issuance of the bonds and has approved the issuance of the bonds by the Authority; and

WHEREAS, the Commission has reviewed the application and the materials submitted with the application.

NOW, THEREFORE, the Commission resolves as follows;

Section 1. The Commission, based on its review of the application and the information submitted therewith, does determine that:

(a) the public benefits from the acquisition of the facility described in the application likely will substantially exceed any public detriment from the issuance of the bonds in the estimated principal amount of \$8,285,375; and

(b) use of the Project described in the application and the operation of the facility described in the application is reasonably necessary to prevent the relocation of

substantial operations of the Applicant from an area within the State of California to an area outside of the State of California.

Section 2. The Commission conditionally finds that the proposed issuance of the bonds qualifies under the provisions of Article 5 of Title 10 of the Government Code, and further finds that:

(a) the bonds will be adequately secured and the funds available to the Applicant will apparently be sufficient to pay the principal of and interest on the bonds to be issued; and

(b) based on its review of the preliminary material submitted to it and as provided for under Government Code Section 91571, the proposed issuance will be fair, just and equitable to a purchaser of the bonds, and that the bonds proposed to be issued and the methods to be used by the Authority in issuing them will not be such as will work a fraud upon the purchaser thereof.

Section 3. The Commission determines that it is appropriate to the proposed transaction that the qualification of the proposed issuance be subject to the following conditions:

(a) that the final legal documents, when ready for execution, be submitted for review by Commission staff. Submitted documents shall include:

- (i) Loan Agreement,
- (ii) Escrow Agreement,
- (iii) Opinion of Bond Counsel
- (iv) Bond Resolution, and
- (v) Other documents which, in the opinion of Commission staff, are necessary to the review of the transaction;

#### **Agenda Item - 4.A.1**

(b) that the Commission staff determine that the final documents associated with the transaction have been developed in form and content substantially similar to the representations in the application on which the findings under Section 2. above are based;

(c) that the bonds, when issued, are within the maximum limitation of bonds authorized in the California Industrial Development Financing Act (Section 91573(a) of California Government Code);

(d) that the Commission receive all applicable fees prior to the issuance of the bonds or that bond documents indicate that such fees are to be paid from the proceeds of the bonds; and

(e) that the Applicant has agreed to comply with Section 91533(l) of the Government Code relating to the payment of prevailing wages.

Section 4. This Resolution shall cease to be effective if the above-described bonds have not been issued within six months after the date of adoption of this Resolution.

Section 5. In compliance with the provision of the California Industrial Development Financing Act (Section 91754 California Government Code), the qualification of the proposed bond issue by this resolution is permissive only, and does not constitute a recommendation or endorsement of the bonds so qualified by the Commission.

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May 11 07 01:46 RECEIVED  
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Attachment A Agenda Item 4.A.1.  
1209-468-3025 p. 2  
Board of Supervisors  
222 East Weber Ave  
Courthouse, Room 701  
Stockton, California 95202  
KEN VOGEL  
Representing the Fourth District  
Telephone (209) 468-3113  
Fax: (209) 468-3694  
Denise Warnerham  
Legislative Assistant

May 11, 2007

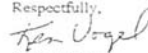
Honorable Bill Lockyer, State Treasurer  
State Treasurer's Office  
915 Capitol Mall, Room 110  
Sacramento, CA. 95814

Re: Prima Noce, Inc.'s Application for 2007 Volume Cap with the California  
Debt Limit Allocation Committee

Dear Mr. Lockyer:

In connection with your review of Prima Noce Packing, Inc.'s (the "Company") Application for 2007 Volume Cap with the California Debt Limit Allocation Committee ("CDLAC"), I am sending this letter in support of the Company's request for an allocation of 2007 Volume Cap. The Company is a model business partner, providing employment opportunities, adding to our economic base and providing financial support to our community. An allocation of 2007 Volume Cap will enable the Company to issue tax-exempt bonds that will finance a manufacturing facility that will further diversify and strengthen our local economy. As such, I strongly support the Company's efforts to obtain an allocation of 2007 Volume Cap through the CDLAC.

Please do not hesitate to contact me at (209) 468-3113 should you have any questions or if I may be of further assistance.

Respectfully,  
  
KEN VOGEL  
Supervisor, District Four

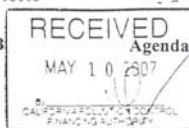
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PRIMA FRUTTA



Attachment B



P.02

Agenda Item 4.A.1.

SAN JOAQUIN COUNTY

P.O. Box 201054 102 South San Joaquin Street Stockton, CA 95201-3008

JOSEPH E. CHELL  
Mayor

Tel: (209) 499-1222  
Fax: (209) 499-1225

County Clerk  
T. William E. Spence  
County Auditor  
Barbara J. Jones  
County Treasurer  
John C. Smith

May 10, 2007

Prima Noco Packing  
Prima Frutta Packing  
16461 E. Comstock Road  
Linden, CA 95236

Re: Future Collaboration with CalWORKs Employment Services

Dear Mike or Dawna

In response to your e-mail Prima Frutta and Prima Noco is engaged in supporting our CalWORKs participants by helping them to achieve their self-sufficiency goals. Your active support of our employment development is vital to our participant's accomplishments. By giving our participants the opportunity to obtain forklift driver, general labor and fruit sorting positions you are helping to make our program a success.

Sincerely,

Christina Tupas  
Job Developer  
CalWORKs Employment Services

Our Mission is to lead in the  
creation and delivery of services that improve  
the quality of life for our community.



Attachment C

Agenda Item 4.A.1.



Phillip Pennino  
Major Account Rep  
Economic Development

P.O. Box 930  
Stockton, CA 95201  
(209) 942-1730 Telephone  
(209) 942-1480 Fax  
(209) 520-5649 Pager  
PAP5@pg&e.com

April 6, 2007

Mr. Lawrence Sambado  
Prima Noce Packing  
16461 East Comstock Road  
Linden, CA 95236

Dear Lawrence:

Thank you for participating in PG&E's Non Residential New Construction Incentive program. PG&E is currently working with Prima Noce Packing to design energy efficiency into the new facility.

It is our understanding Prima Noce will be installing the following energy efficient systems:

- Widespread used of Variable Frequency Drives
- Premium Efficiency Motors for large horsepower applications
- Energy efficient designs and control of blowers and fans used for aspiration
- Installation of skylights (9% roof coverage) and transparent side wall panels to reduce the need for lighting
- Fully insulated building eliminating the need for a HVAC system

PG&E currently estimates Prima Noce Packing, Inc. will achieve more than a 15% energy reduction through implementation of these energy efficient items.

Please contact me with any questions or more information.

Sincerely,

*Phillip Pennino*

Phillip Pennino  
Account Representative

04/26/2007 11:57 2899328957

PRIMA FRUTTA

PAGE 02/03

To: Mike Page 1 of 1

RECEIVED 04/26/2007 15:31 2899328957  
2007-04-26 23:30:41 (GMT)

PRIMA FRUTTA

From: Mike Clark

Attachment C

Agenda Item 4.A.1.

## LMC West

5300 Claus Rd.  
P.O. Box 325  
Riverbank CA 95367

Toll Free 800-562-0072  
Phone 209-869-0296  
Fax 209-869-0258  
E-Mail [lmowest.com](mailto:lmowest.com)

April 5, 2007

Prima Noce Packing, Inc.  
16481 East Comstock Road  
Linden, CA 95236

Re: Energy Efficiency Prima Noce Packing, Inc.

Dear Mike,

Fan Cyclone combinations are the greatest users of energy in walnut processing facilities. If maximum energy savings are to be achieved, then efficient Fan Cyclone designs must be employed. The Prima Noce Walnut Processing facility design currently utilizes nine of these systems at the following locations:

- 2 systems for aspiration on the main sizing deck
- 2 systems for aspiration on the small haive and large piece sizing deck
- 2 systems to evacuate the dual airleg shell separation system
- 1 system in the cracking hall to remove meal
- 1 system in the laser sorting area to remove meal
- 1 system in the packing area to remove meal

The Fan Cyclone combination that we are using employs a backward curved fan located on the clean side of the cyclone. These fans are 20% more energy efficient than the traditional standard radial fans used on the dirty side of the cyclone. Backward curved fans are typically 75% mechanically efficient.

We are also saving an additional 15% by incorporating Variable Frequency Drives (VFD) on the blowers. A VFD allows the operator to set the speed of the fan at the optimal level to achieve greatest performance and efficiency. The ability to match fan performance with the application by using the VFD drive will prevent excessive use of electricity that is common in systems where airflow is solely controlled by dampers, slide gates or air bleeds.

We are also using premium efficiency motors on the blowers for maximum energy conservation.

All combined, we calculate that will achieve a reduction of greater than 15% from a traditional installation.

Sincerely,



Mike Clark  
President, LMC West  
[www.lmowest.com](http://www.lmowest.com)  
209-602-8552 Cell

In the legal questionnaires submitted with its application, the Company responded “no” to all questions for the Prima Noce and Walnut Ventures entities. With respect to an affiliate of the Company, Prima Frutta, the Company responded with respect to criminal matters that “[c]ertain of the corporate and individual applicants are the subjects of a tax investigation by the Internal Revenue Service and the United States Attorney’s Office for the eastern District of California which involves statutes identified as felonies and/or misdemeanors under the United States Code. The investigation, which commenced at least as early as October 2004, has not resulted in the filing of any charges. The management of the business entities have cooperated with the government by making employees, accountants and documents available as required. **While it is entirely premature to speculate as to the nature of such charges, were they to be filed, or against whom such charges would be filed, an adverse result in any resulting litigation could have a material affect on the financial condition of a particular business or businesses of the applicant. The fact of a filing in and of itself would not likely have a material affect** [emphasis added].”

With respect to civil matters involving Prima Frutta, the Company responded that “...the investigation referred to in the answer to [criminal matters] could result in the applicant becoming the subject of a civil tax inquiry and potential additional tax liability when it is concluded.”

When asked for additional information concerning this investigation and its possible outcomes and affects, the Company responded as follows:

“The company is advised by counsel that the IRS and the United States Attorney do not generally disclose the factual basis for tax investigations until the inquiry has been completed and they are ready to formally discuss the matter in detail. However, based on the records they have examined and questions asked of employees, it appears that the IRS and the US Attorney are examining the receipt and uses of income from the sale of off-grade fruit received from growers.

As an industry practice, off-grade fruit is sold to “peddlers,” who pay in cash or by check. The cash is largely remitted to the growers as part of a seasonal accounting. Accordingly, it appears that the principal issue under review is whether the income and expenses were fully and correctly reported by the entity or entities who handled and serviced the product, received the payments or to whom the income is attributable under the tax code.

Given the strength of the company, its excellent relationships with growers and the fact that peddler fruit sales are a small percentage of annual income, management does not believe that any of the possible outcomes will threaten the financial viability of the company or project [emphasis added].

There is no current indication from the IRS or US Attorney as to when the investigation will be concluded. It is reasonable to assume, however, based on current requests for information and the normal process of internal review at the IRS, that the inquiry will be concluded within the period of the next 6-12 months.”



**ADDITIONAL FINDINGS**

Staff found that Prima Frutta was the defendant in a U.S. Equal Employment Opportunity Commission (EEOC) case in 2004 [EEOC v. Prima Frutta Packing, Inc., & J. Jesus Gonzales Labor Contractor: No. C-03-04237 PJH: N.D. Cal. Mar. 11, 2004 and April 19, 2004]. According to an EEOC Litigation Settlement Report for April 2004, “[t]he San Francisco District Office filed this Title VII action, alleging that 13 Hispanic seasonal laborers (11 women and 2 men) who worked during the cherry picking season at a California agricultural [Prima Frutta] packing house...were subjected to a barrage of verbal harassment based on national origin (Mexican and Salvadoran) and/or gender (female) by a manager-owner of the PF [Prima Frutta] facility...On a daily basis, the manager made abusive comments to the Hispanic employees such as ‘Mexicans aren’t worth s----,’ ‘Mexicans are lazy,’ and ‘Mexican b----- are only good to go to the bathroom and f--- men.’ Although the laborers complained about the harassment to management, they were told to ignore the manager’s behavior....” The alleged discrimination and harassment took place during the 2001 cherry season.

The EEOC and Prima Frutta settled the case in April 2004. According to the EEOC report, the settlement involved a five-year consent decree whereby Prima Frutta would (1) pay \$235,000 in compensatory damages, (2) revise its nondiscrimination policies to include gender and national origin discrimination/harassment and alternative routes for complaints, (3) print the nondiscrimination policies and procedures in English and Spanish and distribute them to all Prima Frutta employees and to the supervisory personnel of each farm labor contractor, (4) hire an outside consultant to provide training on gender and national origin discrimination to all employees who are responsible for supervising or managing its employees or for interacting with the labor contractor supervisors, and (5) notify EEOC counsel of any discrimination or harassment complaints and resolutions on a quarterly basis.

Staff tried several times to contact the EEOC concerning this settlement, but no substantive responses have been received to date.<sup>1</sup> Staff discussed the case with Prima Frutta’s counsel in the matter, Paul Sheldon, and asked for more information directly from the Company.

Mr. Sheldon stated that the original claim exceeded \$1 million. He said the case went to mediation through JAMs. Mr. Sheldon said that the Company paid \$235,000 in compensatory damages to avoid a costly defense of the case. The Company had several witnesses that disputed the allegations, but the Company believed a defense would be too costly so it “paid to get out.” In addition to compliance with the terms of the consent decree, the Company also installed cameras in the packing facility to monitor activities in the facility and to record interactions between workers and between workers and supervisors. Mr. Sheldon stated that, at the end of each shift, supervisors report any and all complaints to management. In the three years since the settlement, there have been no complaints to the EEOC or to any other entity.

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<sup>1</sup> Staff also contacted the State Agriculture Labor Relations Board (ALRB) to determine if it has received any complaints or had any concerns about Prima Frutta. Initially, the analyst at the ALRB said that there were no records of any complaints, and that she was unaware of any concerns the ALRB may have with the Company. Subsequently, staff found a 2001 administrative matter brought before the ALRB that involved an affiliate of Prima Noce, namely A. Sambado & Sons. According to the ALRB, the General Counsel’s Office ultimately settled the matter with A. Sambado & Sons, there was no official finding of an unlawful act by A. Sambado & Sons, and documents show that A. Sambado & Sons complied with all conditions of the settlement.

The Company provided the following response:

“Overall, the position of Prima Frutta Packing Company is that the allegations made by the EEOC in its complaint were groundless, and the result of false claims and opportunism by a few disgruntled seasonal workers (13 out of nearly one thousand such workers during the time in question, i.e., the 2001 cherry season). Prima Frutta has been in operation since 1990, and has had no claims of racial or gender discrimination either before or since this one EEOC case...The EEOC complaint included *allegations* of "harassment" by name-calling only, and then virtually the only "names" alleged used were "lazy" and "stupid." Although nearly all of the claimants were Hispanic, there were NO allegations of use of improper names for Hispanic heritage, for example...There was an officer of the company named in the *allegations* of the complaint, but there was no officer of the company involved in any actual wrongdoing. The attorneys interviewed numerous witnesses who were prepared to testify that the claimed events simply never happened. These witnesses included, among others, two State of California food inspectors stationed at the Prima Frutta packing facility at all times during the cherry packing season in question (and in previous seasons). These were both female inspectors, employees of the state charged with enforcing state law, with no reason to side with Prima Frutta. According to the inspectors themselves, the female Hispanic seasonal workers understood that the workers could go to the inspectors with various complaints and that the inspectors did not work for Prima Frutta...These inspectors were completely independent, had the trust of the workers, and were present for the precise circumstances alleged by the claimants, yet stated they would testify under oath that they NEVER saw or heard any of the types of inappropriate actions alleged by the claimants...One other action taken by Prima Frutta as a result of the EEOC action, which was NOT required by the Consent Decree or even suggested by the EEOC, but was taken for the protection of the the company and its workers, was the installation of cameras at various points in the packing facility. We anticipated that this would result in an immediate end to false claims...Not one complaint of discrimination has been received by the company since the installation of the cameras and entry of the consent decree in April of 2004, despite the fact that we have an employee check every day to see if there are any complaints...Our attorneys had estimated that with nearly 100 depositions likely in the matter, the case could cost close to \$1 million to defend. Rather than pay \$1 million to prove that we were right, we made an economic, business decision to pay less than one-fourth of that (\$235,000.00) to settle the case...Since the entry of the consent decree, we have had no problems whatsoever with the EEOC, either on the referenced case or on any other matter.”

#### **ONGOING FINANCIAL VIABILITY OF THE COMPANY**

When asked if a possible “material effect” from the outcome of the tax investigation also could have a negative effect on the ongoing financial viability of the company and/or the Project, the Company responded that “the outcome of the investigation will not affect Prima Noce Packing nor Walnut Ventures LLC since they are not the focus of the investigation.” Although some of the individual owners of Prima Frutta who are subject to the investigation also have ownership interest in Prima Noce and Walnut Venture, the Company representative noted that Prima Noce has significant investment from entities that do not have ownership interest in Prima Frutta and are not involved in the investigation (i.e., outside growers).